

Title 5, §13070-J, Business reporting associated with eligibility for public subsidies and incentives

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1. Definitions. As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

A. [2001, c. 481, §2 (rp).]

B. "Commissioner" means the Commissioner of Economic and Community Development.

C. "Department" means the Department of Economic and Community Development.

D. "Economic development incentive" means: [RR 2001, c. 2, Pt. A, §11 (cor).]

- (1) Assistance from Maine Quality Centers under Title 20-A, chapter 431-A;
- (2) The Governor's Training Initiative Program under Title 26, chapter 25, subchapter 4;
- (3) Municipal tax increment financing under Title 30-A, chapter 206;
- (4) The jobs and investment tax credit under Title 36, section 5215;
- (5) The research expense tax credit under Title 36, section 5219-K;
- (6) Reimbursement for taxes paid on certain business property under Title 36, chapter 915;
- (7) Employment tax increment financing under Title 36, chapter 917;
- (8) The shipbuilding facility credit under Title 36, chapter 919; or
- (9) The credit for seed capital investment under Title 36, section 5216-B.

E. "Economic development proposal" means proposed legislation that establishes a new program or that expands an existing program that:

- (1) Is intended to encourage significant business expansion or retention in the State; and
- (2) Contains a tax expenditure, as defined in section 1664, or a budget expenditure with a cost that is estimated to exceed \$100,000 per year.

2. Disclosure. Each applicant for an economic development incentive described in subsection 1, paragraph D, subparagraphs (1) to (4) and (7) shall at a minimum identify in writing:

- A. The public purpose that will be served by the business through use of the economic development incentive and the specific uses to which the benefits will be put; and
- B. The goals of the business for the number, type and wage levels of jobs to be created or retained as a result of the economic development incentive received.

Applications filed under this subsection are public records for purposes of Title 1, chapter 13.

3. Report. Annually, a business receiving an economic development incentive described in subsection 1, paragraph D, subparagraphs (1) to (8), the value of which exceeds \$10,000 in one year, shall submit a written report to the commissioner no later than August 1st of the following year containing but not limited to the following information:

- A. The amount of assistance received by the business in the preceding year from each economic development incentive and the uses to which that assistance has been put;
- B. The total amount of assistance received from all economic assistance programs;
- C. The number, type and wage level of jobs created or retained as a result of an economic development incentive;
- D. Current employment levels for the business for all operations within the State, the number of employees in each job classification and the average wages and benefits for each classification;
- E. Any changes in employment levels that have occurred over the preceding year; and
- F. An assessment of how the business has performed with respect to the public purpose identified in subsection 2, paragraph A, if applicable.

The department shall mail report forms by May 15th of each year to every business required to file a report under this subsection. Reports filed under this subsection are public records for purposes of Title 1, chapter 13.

4. Agency reports. The following agencies shall submit the following reports.

- A. The State Tax Assessor shall submit a report by October 1st annually to the Legislature identifying the amount of

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public funds spent and the amount of revenues foregone as the result of economic development incentives. The report must identify the amount of the economic development incentives under the jurisdiction of the Bureau of Revenue Services received by each business to the extent permitted under Title 36, section 191 and other provisions of law concerning the confidentiality of information.

- B.** The Commissioner of Labor shall report by October 1st annually to the Legislature on the amount of public funds spent on workforce development and training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the Department of Labor received by each business and the public benefit resulting from those economic development incentives.
- C.** The Maine Technical College System shall report by October 1st annually to the Legislature on the amount of public funds spent on job training programs directly benefiting businesses in the State. The report must identify the amount of economic development incentives under the jurisdiction of the system received by each business and the public benefit resulting from those economic development incentives.
- D.** The department shall report by October 1st annually to the Legislature the following:
 - (1) The amount of public funds spent for the direct benefit of businesses in the State under municipal tax increment financing, employment tax increment financing and the Governor's training initiative. The report must identify the amount of economic development incentives under the jurisdiction of the department received by each employer and the public benefit resulting from those economic development incentives; and
 - (2) The activities in the State, in the aggregate, of businesses receiving funds through the Maine Seed Capital Tax Credit program, including the following:
 - (a) The total amount of tax credit certificates issued by the Finance Authority of Maine;
 - (b) The total amount of private investment;
 - (c) Total employment;
 - (d) The total number of jobs created;
 - (e) The total number of jobs retained;
 - (f) Total payroll; and
 - (g) Total annual sales.

The Finance Authority of Maine shall provide the department with the information collected in accordance with Title 10, section 1100-T, subsection 6 and assist in the preparation of this report.

E. The department shall report by October 1st annually to the State Tax Assessor a listing of businesses that have failed to submit reports required under subsection 3. The report must document that each business included in the report was provided with reasonable official notification of its noncompliance and that its failure to submit the required report within 30 days would result in the withholding and potential forfeiture of reimbursements for which the business may be eligible under Title 36, chapter 915. The notification must be in the form of a letter posted by certified mail before August 15th of the reporting year. If the department subsequently receives a report from the business, the department shall so notify the State Tax Assessor.

F. Prior to any forfeiture of benefits under Title 36, section 6652, subsection 3, the department shall make a written determination that the report required by subsection 3 either has not been received or is not in an acceptable form. A copy of that written determination, including the reasons for the determination, must be mailed to the claimant by certified mail. The determination made by the department constitutes final agency action that is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that sections 11006 and 11007 do not apply. The Superior Court shall conduct a de novo hearing and make a de novo determination as to whether the claimant has filed a report in substantial compliance with this section. The Superior Court shall make its own determination as to all questions of fact and law. The Superior Court shall enter such orders and decrees as the case may require. In the event that the department's determination is appealed to Superior Court pursuant to this paragraph, forfeiture of the claimant's right to receive reimbursement of taxes under Title 36, chapter 915 may not occur unless the Superior Court, subject to any appeal to the Law Court, finds that the claimant had not substantially complied with the reporting requirements of this section.

5. Rules. Rules adopted by the commissioner under this section are routine technical rules as defined in chapter 375, subchapter II-A.